IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

-

WRIT PETITION NO : 18399 of 2004

Between:

S. Seshaiah, S/o. Peda Nagabhushanam,
R/o. Pedavadlapudi Village Mangalagiri Mandal,

Guntur District,
Licencee of M/s. Kanaka Durga Wines

..... PETITIONER

AND

1. The Commissioner for Prohibition and Excise, Hyderabad.
2. The Deputy Commissioner of Prohibition and Excise, Guntur.
3. The Prohibition and Excise Superintendent, Guntur.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue Writ of Mandamus or any other appropriate Writ or direction declaring the order of the 1st respondent passed in Cr.No. 14107/2004/CPE/D4 dated 21-8-2004 in confirming the order of the 2nd and 3rd respondent passed in Rc.No. 529/2003 B1 dated 3-6-2004 and Rc.No. 1055/2003/B2 dated 17-9-2003 in so far dismissing the appeal on the ground that the licence period has expired as illegal arbitrary and consequently direct the respondents to renew the licensee of the petitioner for the excise year 2004-05 i.e. till 31-3-2005.

Counsel for the Petitioner: MR.A.JAGANNATHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following:

ORDER:

The petitioner is an IL 24 licencee, who has obtained the licence for retail vending of IMFL in the name and style of M/s Kanakadurga Wines at Mangalagiri, Guntur District. Initially he obtained a licence in the year 1997-98, it was renewed from time to time and as per the latest renewal, his licence was valid up to the end of the excise year 2003-2004.

2. During the currency of his latest licence, a case was registered in Crime No. 96 of 2003 in the Mangalagiri Town Police Station under Section 304 I.P.C. Wherein the petitioner was also arraigned as an accused. After investigation, however petitioner's name was deleted. The Prohibition and Excise Inspector, Mangalagiri also registered a crime against the petitioner for an offence punishable under Section 37(a), 31(1)(b) and 36(c) of A.P. Excise Act, 1968 (for short 'the Act') in P.R. No. 68/2003-04.

3. In respect of these offences registered, the third respondent issued a show cause notice to the petitioner on 28.08.2003 seeking his explanation. On receipt of the petitioner's explanation, the third respondent passed orders dated 17.09.2003 canceling the IL24 licence of the petitioner, under Section 31 of the Act. The reasons recorded for such cancellation by the third respondent are that the petitioner's agent (nowkarnama) at the shop sold "Gold Fine Nip bottle" in loose and allowed the consumption in the shop premises, which resulted in the death of three persons, as the liquor sold by the petitioner's agent was adulterated and poisonous, leading to

death. Aggrieved thereby the petitioner preferred an appeal to the second respondent, who by the order dated 03.06.2004, declined appellate interference.

4. It requires to be noted that the second respondent recorded that there was no dispute that the deceased consumed IML purchased from the appellant's shop and that the liquor was free from any adulteration. The second respondent also held that the charge under Section 37(a) of the Act was not attracted; that the deaths were caused due to mixing of Cyanide in the water which was used by the deceased to dilute the IML, after purchasing the liquor from the petitioner's shop; that this water was procured from a cool drinks shop outside the petitioner's licenced premises; and that there was no evidence whatsoever to come to the conclusion that loose liquor was vended by the petitioner, that consumption was allowed in the shop itself or that water was made available from the petitioner's shop. Despite these conclusions, the second respondent rejected the appeal on the ground that since the appellant's licence was already cancelled and the lease period was over, no interference is called for.

5. Aggrieved thereby, the petitioner preferred a further appeal to the first respondent. By the order dated 21.08.2004 the first respondent rejected the appeal on the ground that the licence granted to the petitioner was only for one year. The first respondent/second appellate authority's order requires to be extracted and it is so extracted to the extent material for the purposes of this Writ Petition, as under:

> *"8. A perusal of the records reveals that the Inspector of police, CID, Vijayawada after completion of investigation laid a charge sheet under Section 302 r/w 34 IPC before the Hon'ble VIIth Additional Munsif Magistrate, Guntur against the accused Vinjamuri Srinivasarao and .Ravindranath Babu @ Ravi for mixing the cyanide poison with the water with an intention that the cyanide poison will harm liquor consumers and finally stated that the consumption resulted in the death of deceased persons It is stated in the charge sheet that both the accused wanted easy money and hatched a plan to kill sleeping passengers in running trains by smearing cyanide on their lips and steal money after their death. Both of them wanted to make a trial test at Urvasi Bar and Restaurant. In furtherance of their common intention they proceeded to Urvasi Bar & Restaurant, Tadepalli and mixed the cyanide in*

the jug of water which was kept on the pail which resulted in four deaths for which a case was booked in crime No. 160/2003, under Section 302 I.P.C. of Tadepalli P.S. The three witnesses examined by the Deputy Commissioner of Prohibition and Excise also stated that the deceased persons have consumed the IML purchased from the appellant shop after diluting it with water from the jug kept at the cool drink shop. The Gold Fine Whisky bottles which were purchased by the deceased persons were supplied by the A.P.B.C.L. only. As per the report of the Chemical Examiner no adulteration was found in the liquor on the samples drawn from the shop after the incident. There is no report regarding the arrangements for sitting the consumers to consume liquor in the licensed premises. It is not even reported that the licensee provided some amenities like chairs, tables, glasses and snacks etc. The Commissioner of Prohibition and Excise vide Cr.No.2516/DPE/EX/98/C5, dated 9.10.1998 issued a circular stating that if the consumption takes place outside the licensed premises the licensee is not responsible and the above fact should be brought out very clearly in panchanama and FIR. It further states that if the consumption is detected within the licensed premises then only case should be booked and departmental action as well as criminal action shall be initiated against licensee.

9. *In the result, the appeal is dismissed since licence was only for one year."*

6. Nothing more need be stated except that a even a bare perusal of the second appellate order of the first respondent would reveal that it is perverse. The conclusion of the respondents 1 and 2 that the second and first appeals preferred by the petitioner should be rejected on the ground that the licence period is already over, even though no facts are available on record to support the conclusion of the misconduct of the petitioner qua the charges leveled against him, are conclusions which are perverse and which no reasonable person acting in a quasi-judicial capacity would arrive at.

7. On the above analysis, the Writ Petition is allowed. The order of the third respondent dated 17.09.2003 canceling the petitioner's licence, as confirmed by the appellate authority the second respondent dated 03.06.2004 as further confirmed by the first respondent by the order dated 21.08.2004, are all hereby quashed. In the circumstances of the case, there shall however be no order as to costs.

30-12-2004

kvrm

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday Thirtieth day of December, two thousand and four.

To

1. The Commissioner for Prohibition and Excise, Hyderabad.
2. The Deputy Commissioner of Prohibition and Excise, Guntur.
3. The Prohibition and Excise Superintendent, Guntur.

4. 2 CCs to G.P. for Prohibition and Excise, High court Buildings,

Hyderabad (OUT)

5. 2 CD copies.